



November 1, 2021

Employee Benefit Security Administration
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

RE: Proposed Revision of Annual Information Return/Reports RIN 1210-AB97

The Employee Benefits Committee of the Illinois CPA Society (“Society”) , with concurrence from the Society’s Audit & Assurance Services Committee, appreciates the opportunity to provide its perspective on the Department of Labor’s (“DOL”) document RIN 1210-AB97, proposed amendments to regulations relating to annual report requirements under Title I of the Employment Retirement Income Security Act of 1974, as amended (ERISA), specifically as it relates to changes outlined in Section 1.2, “*Plans affected by change in participant-count methodology for determining large plan versus small plan status and related filing requirements*”. This proposal changes the determination as to whether a plan is a large plan to being based on the number of participants with account balances on the first day of the plan year, as compared to the current determination based on the number of eligible participants on the first day of the plan year. While we recognize the DOL’s intention to provide cost savings to plans by providing an exemption to the requirement of providing a report from an Independent Qualified Public Accountant (“IQPA”), we believe the agency should consider the comments outlined below.

While we agree that sponsors with qualified plans with 100 or more eligible participants with only a small amount of those participants with account balances find it burdensome to retain and pay for an IQPA, we fear that omitting those plans from the audit requirement would have adverse effects on all eligible participants and expose the plan itself to adverse consequences for failing to follow the terms of their plan document. Our comments are based mainly on audits of Defined Contribution plans, specifically Internal Revenue Code Section 401(k) Plans.

We provide the following examples of document provisions that are commonly misinterpreted by the plan sponsor and would possibly go uncorrected were the plan not to undergo audit by an IQPA:

Errors in Determining Eligibility and Enrolling Eligible Employees

Plans that lack adequate internal controls, which is more typical in plans that would be exempted from audit under the proposal, do not always notify employees in a timely manner of their eligibility to participate in their plan, or even that a plan is available to them. As a result, some employees that are eligible to defer and who may wish to do so, do not get the opportunity to participate, or are enrolled later than when initially eligible. In addition, such plan sponsors may prepare and provide to their third-party service providers incomplete or inaccurate census information. That can result in incorrect results from required discrimination testing and prevent



their third-party service providers from catching errors that would generally be caught through the audit process.

Errors in Implementation of Automatic-Enrollment Features

A plan that adopts an automatic enrollment feature may not actually implement or incorrectly implement the feature. We have, upon audit, found numerous instances where the plan does not appropriately implement the feature, and have proposed corrections to the plan sponsor to make affected participants whole within the plan, hopefully without a significant financial burden to the plan sponsor. However, we have seen the correction in certain situations, if the automatic enrollment feature is not implemented over several years, amount to, in one case, almost one million dollars. Changing the determination of large plan versus small plan could lead to adverse effects on the plan participants, as well as the plan sponsor.

Errors in Implementation of Deferral and Investment Option Changes

Although many of the changes to deferral and investment option changes are done by participants through the internet, many plans still use paper forms to process such changes. And deferral changes done through the internet may still need to be sent back to plan sponsors to update in their payroll systems. Inadequate internal controls at plan sponsors sometimes result in incorrect or untimely processing of these changes. Such matters would not be caught if certain plans were exempted from the audit requirement.

Definition of Compensation

A common deficiency we note in our audits is the plan sponsor not following the definition of compensation as outlined in the plan document. This occurs due to various factors, including but not limited to such items as manual checks, bonus payments, overtime, vacation/sick pay, shift differentials and severance pay. These items may be subject to deferral based on the plan document, but deferrals are not taken. While these omissions might be trivial to the plan taken as a whole, the omissions are not trivial to the affected participant. In other cases, the severity of the omissions causes us to consider the omissions as a material weakness in internal control. If these plans were no longer subject to an audit, these deficiencies could go on undetected indefinitely, causing adverse effects to the affected participants.

Timely Remittances of Employee Deferrals

Many plan sponsors are unaware of the DOL requirements as it relates to the timeliness of remitting employee deferrals and loan repayments to the asset custodian of the plan. In addition, many investment providers, especially those that are sales driven, provide inaccurate guidance to their clients as what is considered a “timely remittance”. We find that many plan sponsors still follow the “15th business day of the following month” safe-harbor guidance provided by the DOL, or even the “7 business day” safe-harbor provided to small plans, even though the DOL requires



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deferrals be remitted “as soon as the assets can be reasonably segregated from the general assets of the plan sponsor”. In addition, many Third-Party Administrators (“TPAs”) of retirement plans specifically ask the plan sponsor whether they made their remittances on a timely basis, and the question is answered inappropriately. While this deficiency is easier for TPAs to monitor, they sometimes do not, and it is a deficiency only determined upon audit by an IQPA.

Incorrect Calculation of Vested Benefits

The determination of vested benefits of employer contributions made to a plan is often left to the plan sponsor. Many sponsors leave this determination to company personnel who are not qualified to make it. We have noted many instances of a vested benefit being calculated incorrectly during our audits, with participants either receiving too little or too much of their employer-based account balance within the plan. This then requires the plan sponsor to either to try to recover the overpayment or remit funds to the plan to make the plan whole for the overpayments.

We note that the provisions documented above are more pervasive in plans that would be removed from the audit requirement based on the proposals in RIN 1210-AB97. These entities typically lack the personnel with understanding and education necessary to follow the provisions set forth in the plan document. As these provisions are part of the procedures required as part of an audit subject to Generally Accepted Auditing Standards (“GAAS”), plans deficient in following the provisions noted above would not be discovered without an audit being performed.

We believe that changing the methodology, which, per your proposal, would remove an estimated 19,442 plans from the requirement of having an audit performed by an IQPA, would not be in the best interests for plan sponsors and participants. Language in your proposal states “*The Form 5500 Annual Return/Report also serves as the primary means by which the operations of plans can be monitored by plan participants, beneficiaries, and the general public*”. Without the audit performed by an IQPA, this monitoring would not be possible.

We appreciate the opportunity to offer our comments.

Sincerely,

William Zorc, CPA
Chair, Employee Benefits Committee

Genevra Knight, CPA
Chair, Audit & Assurance Services
Committee



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APPENDIX A
EMPLOYEE BENEFITS COMMITTEE
ORGANIZATION AND OPERATING PROCEDURES
2021 – 2022

The Employee Benefits Committee of the Illinois CPA Society (Committee) is composed of the following technically qualified, experienced members appointed from industry, government, and public practice. The Committee usually operates by assigning Subcommittees of its members to study and discuss fully exposure documents proposing additions to or revisions of accounting, audit and attestation standards. The Subcommittee develops a proposed response that is considered, discussed, and voted on by the full Committee, which is then submitted to the appropriate senior-level committee of the Illinois CPA Society for its review and approval. Support by the two Committees results in the issuance of a formal response, which at times includes a minority viewpoint. Current members of the Employee Benefits Committee and their business affiliations are as follows:

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